

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

SECURITIES INVESTOR PROTECTION
CORPORATION,

Plaintiff,

v.

BERNARD L. MADOFF INVESTMENT
SECURITIES LLC,

Defendant.

In re:

BERNARD L. MADOFF,

Debtor.

SUSANNE STONE MARSHALL, ADELE FOX,
MARSHA PESHKIN, and RUSSELL OASIS,

Plaintiffs,

v.

CAPITAL GROWTH COMPANY; DECISIONS,
INC.; FAVORITE FUNDS; JA PRIMARY LIMITED
PARTNERSHIP; JA SPECIAL LIMITED
PARTNERSHIP; JAB PARTNERSHIP; JEMW
PARTNERSHIP; JF PARTNERSHIP; JFM
INVESTMENT COMPANIES; JLN PARTNERSHIP;
JMP LIMITED PARTNERSHIP; JEFFRY M.
PICOWER SPECIAL COMPANY; JEFFRY M.
PICOWER, P.C.; THE PICOWER FOUNDATION;
THE PICOWER INSTITUTE OF MEDICAL
RESEARCH; THE TRUST F/B/O GABRIELLE H.
PICOWER; BARBARA PICOWER, individually, and
as Executor of the Estate of Jeffry M. Picower, and as
Trustee for the Picower Foundation and for the Trust
f/b/o Gabrielle H. Picower; and IRVING H. PICARD,
Trustee for the Liquidation of Bernard L. Madoff
Investment Securities LLC,

Defendants.

Adv. Pro. No. 08-01789 (SMB)

SIPA LIQUIDATION

(Substantively Consolidated)

Adv. Pro. No. 15-01293 (SMB)

ORDER

Upon consideration of the Complaint for Declaratory Judgment filed on August 29, 2015 (the “Declaratory Judgment Complaint”) in the above-captioned adversary proceeding by Susanne Stone Marshall, Adele Fox, Marsha Peshkin and Russell Oasis (collectively, the “Fox Parties”) against Capital Growth Company, Decisions Incorporated, Favorite Funds, JA Primary Limited Partnership, JA Special Limited Partnership, JAB Partnership, JEMW Partnership, JF Partnership, JFM Investment Companies, JLN Partnership, JMP Limited Partnership, Jeffry M. Picower Special Company, Jeffry M. Picower, P.C., The Picower Foundation, The Picower Institute of Medical Research, The Trust f/b/o Gabrielle H. Picower, Barbara Picower, individually, and as Executor of the Estate of Jeffry M. Picower, and as Trustee for the Picower Foundation and for the Trust f/b/o Gabrielle H. Picower (collectively, the “Picower Parties”) and Irving H. Picard (the “Trustee”), Trustee for the substantively consolidated liquidation of the business of Bernard L. Madoff Investment Securities LLC under the Securities Protection Act, 15 U.S.C. §§ 78aaa–III, and the Chapter 7 estate of Bernard L. Madoff; the Fox Parties’ proposed Third Amended Complaint (the “Fox III Complaint”) attached as Exhibit 1 to the Declaratory Judgment Complaint; the Motion for Declaratory Judgment filed by the Fox Parties on November 9, 2015; the Declaration of Helen Davis Chaitman in support of the Fox Parties’ Motion for Declaratory Judgment filed on November 9, 2015; the Picower Parties’ Memorandum of Law in Opposition to the Fox Parties’ Motion for Declaratory Judgment filed on December 18, 2015; the Affirmation of Marcy R. Harris, Esq. in Support of the Picower Parties’ Memorandum of Law filed on December 18, 2015; the Trustee’s Memorandum of Law in Opposition to the Fox Parties’ Motion for Declaratory Judgment filed on December 18, 2015; the Declaration of Keith R. Murphy in Opposition to Fox Parties’ Motion for Declaratory Judgment filed on December 18, 2015; the Affidavit of Vineet Sehgal in

Opposition to Fox Parties' Motion for Declaratory Judgment filed on December 18, 2015; the Fox Parties' Reply Memorandum of Law in Further Support of Their Motion for a Declaratory Judgment filed on January 14, 2016; the Reply Declaration of Helen Davis Chaitman in Further Support of the Fox Parties' Motion for Declaratory Judgment filed on January 14, 2016; the Trustee's Letter to the Court filed on January 28, 2016; the Picower Parties' Letter to the Court filed on January 28, 2016; the Notice of Supplemental Authority filed by the Trustee on January 26, 2017; the Fox Parties' Letter to the Court filed on January 31, 2017; and upon all the pleadings in this action; and upon the hearing held on February 11, 2016; and upon the Court's Memorandum Decision Denying Motion for Declaratory Judgment and Dismissing Complaint (the "Decision") dated March 7, 2017; and

WHEREAS prosecution of the Fox III Complaint would violate the permanent injunction order issued by this Court in *Picard v. Picower*, Adv. Pro. No. 09-01197 (Bankr. S.D.N.Y. Jan. 13, 2011) (the "Permanent Injunction"); and

WHEREAS the Fox III Complaint states derivative or duplicative claims barred by the Permanent Injunction; and

WHEREAS for the reasons and bases set forth in the Decision;

IT IS HEREBY ORDERED:

1. The Fox Parties' Motion for Declaratory Judgment is denied.
2. The Fox Parties' Declaratory Judgment Complaint is dismissed. ~~with~~
~~prejudice.~~[SMB: 3/28/17]
3. The Fox Parties and anyone acting on behalf of or in concert or participation with the Fox Parties are hereby enjoined from prosecuting the Fox III Complaint.

4. This Court shall retain exclusive jurisdiction over the enforcement, implementation, and interpretation of this Order.

Dated: New York, New York
March 28th, 2017

/s/ STUART M. BERNSTEIN
HONORABLE STUART M. BERNSTEIN
UNITED STATES BANKRUPTCY JUDGE